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**VIA HAND DELIVERY**

August 5, 2016

Ms. Judith C. Whitney, Clerk  
VERMONT PUBLIC SERVICE BOARD  
Peoples United Bank Building, 4<sup>th</sup> Floor  
112 State Street  
Montpelier, VT 05620-2701

Re: Docket No. 7970

Dear Ms. Whitney:

In accordance with the Public Service Board ("Board") July 28, 2016 Order, Vermont Gas Systems, Inc. ("Vermont Gas") submits this response to Kristin Lyons' supplemental claim that VGS violated its Certificate of Public Good ("CPG") by damaging a threatened plant species during pipeline construction in Monkton, Vermont.<sup>1</sup> In her July 28 filing, Ms. Lyons claims that VGS's actions constitute a violation of the Board's final order that should be subject to investigation and that the Board should order VGS to show cause why it should not be held in contempt. As set forth herein, VGS's actions do not provide a basis for the relief requested. Instead its actions and the regulatory consequences are being addressed by the Agency of Natural Resources ("ANR").

By notice to the Board on July 19, 2016 Vermont Gas acknowledged that on July 18, 2016 a contractor had inadvertently disturbed Harsh Sunflowers, a state-listed threatened plant species, without a Takings Permit from ANR. In that filing the Company indicated it was working with ANR to determine next steps and submit appropriate documentation to the Board,

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<sup>1</sup> Ms. Lyons initial filing addressed issues relating to wetlands delineation. Vermont Gas filed its response to addressing these issues on July 15, 2016.

In consultation with ANR, Vermont Gas prepared a Harsh Sunflower Mitigation Plan (the “Plan”), reviewed the Plan with ANR, revised the plan in accordance with ANR review comments, and obtained ANR’s acceptance of it. The Plan is provided as Attachment A; ANR’s e-mail indicating concurrence and indicating the Plan is acceptable to ANR for construction to resume on the affected parcel is provided as Attachment B. Vermont Gas respectfully submits that the Plan contains appropriate impact avoidance and corrective measures in response to this event.

In connection with administering its responsibilities concerning protection of endangered species,<sup>2</sup> ANR is also investigating what, if any, additional enforcement actions may be required, including the potential for financial penalties. Just as the Board in reviewing proposed projects allows satisfaction of Section 248 criteria to be shown through ANR permits,<sup>3</sup> Vermont Gas respectfully proposes that the Board should defer any action until ANR has completed its investigation. Otherwise the Parties would be involved in concurrent duplicative investigations addressing the same issue, which could result in contradictory directives to Vermont Gas. We are authorized to state that ANR and the Department of Public Service do not object to this proposal.

Ms. Lyons also apparently claims that the horizontal directional drill (“HDD”) at the Monkton property constitutes a violation of the final order, because that order allegedly limits HDD to the locations specifically identified therein.<sup>4</sup> The Board in paragraph 4 of the final order identified where HDD was required, but did not specifically preclude HDD in other locations.<sup>5</sup> The Board’s discussion at pages 42-44 of the final order weighed the beneficial natural resource avoidance of HDD against the increased cost. The HDD addressed by Ms. Lyons is consistent with the Board’s analysis. It reduces the natural resource impacts relative to open trench construction, and requires no collateral permit amendments. Further, the small incremental cost of HDD relative to open trench construction at this location<sup>6</sup> is not within any exception to the rate cap and therefore it will have no rate impact on customers.

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<sup>2</sup> *E.g.*, 10 V.S.A. Chapter 123.

<sup>3</sup> *E.g.*, Docket No. 7970 (Dec. 23, 2013) at 116 (“for a number of criteria specified in Section 6086, a party may rely upon compliance with a permit issued by ANR that regulates the activity” to demonstrate satisfaction with the corresponding Section 248(b)(5) criterion).

<sup>4</sup> An additional claim in Ms. Lyons’ July 28 filing requires a response. She states that in the case of non-substantial changes, the Board’s approved route did not change until after the wetlands permits had been amended. In fact, the Board approved the first group of non-substantial changes before the Army Corps of Engineers, Construction Stormwater and Vermont wetland permit amendments were issued.

<sup>5</sup> *See* Final Order at 42 (“VGS will employ HDD at a minimum of 15 locations”).

<sup>6</sup> Although HDD generally is more expensive than open-trench construction, the incremental cost of HDD is minimal at this location, in light of the construction challenges relating to surrounding the terrain and other cost considerations.

Ms. Judith C Whitney, Clerk  
August 5, 2016  
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Very truly yours,

SHEEHY FURLONG & BEHM P.C.

A handwritten signature in black ink, appearing to read "Peter H. Zamore", is written over the printed name.

Peter H. Zamore

PHZ/amf

Enclosure

cc: Attached Docket No. 7970 Service List



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